

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Charlotte Ann Smith,)	C/A No.: 0:10-3168-JFA-JRM
)	
Plaintiff,)	
v.)	ORDER
)	
Bank of America, NA, as Successor by Merger)	
La Salle Bank NA as Trustee for Certificate holder)	
of EMC Mortgage Corporation, Loan Trust)	
2005-A- Mortgage Loan Pass Through Certificates)	
Series 2005-A; EMC Mortgage Corporation, and)	
Parent Companies; The Bear Stearns Companies)	
LLC; JP Morgan Chase & Companies; Guardian)	
Fidelity Mortgage, Inc.; Guardian President and)	
CEO Howard H. Wright, Jr.; Guardian Assistant)	
Manager Stacy Youngblood; Guardian Chairman)	
of the Board John Good; Guardian Member)	
Owners/Shareholder/Stockholder,)	
)	
Defendants.)	
_____)	

On December 14, 2010, the defendants removed this action to the United States District Court for the District of South Carolina. Shortly thereafter, and apparently unaware that the case had been removed to federal court, the plaintiff filed a motion in the state court to dismiss her second amended complaint. The defendants then moved to dismiss this federal action contending that the plaintiff's state court motion to dismiss was indicative of her decision to abandon the present action.

The Magistrate Judge assigned to this action¹ has prepared a Report and

¹ The Magistrate Judge's review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews*

Recommendation and opines that the defendants' motion to dismiss (ECF No. 15) should be denied. Specifically, the Magistrate Judge notes that while the plaintiff has exhibited a pattern of illogical motions in various cases before this court, she had made it abundantly clear that she has no intention of abandoning her case against the defendants. Thus, the Magistrate Judge recommends that the defendants' motion be denied. As no objections to the Magistrate Judge's suggested disposition have been filed, this court agrees that the motion to dismiss should be denied.

In his Report and Recommendation, the Magistrate Judge also addresses the plaintiff's motion to remand and for recusal (ECF No. 39), suggesting that it be denied. However, the day before the objections to the Report were due from the plaintiff, she moved this court for an extension of time to file objections until September 30, 2011. The plaintiff contends that she did not receive a copy of the Report and Recommendation until September 6, 2011. For good cause shown, the court hereby grants the plaintiff's motion for an extension time (ECF No. 70). The plaintiff is advised that her objections to the Report must be received by the Clerk on or before September 30, 2011, and that she should allow sufficient mailing time to ensure that the objections are received by the Clerk of Court on the deadline. No further extensions will be permitted.

Because the court will allow the plaintiff an extension within which to file her objections to the Report on the sole remaining matter of the motion to remand and for


v. Weber, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b)(1).

recusal, this court will hold in abeyance its review of the Report on the remand issue until it has had an opportunity to review the forthcoming objections from the plaintiff.

As to the Magistrate Judge's recommendation on the defendants' motion to dismiss, the court has conducted a careful review of the record, the applicable law, and the Report itself, and finds the Magistrate Judge's recommendation to be proper and incorporates the Report herein by reference. Accordingly, the defendants' motion to dismiss (ECF No. 15) is denied.

IT IS SO ORDERED.

September 22, 2011
Columbia, South Carolina

A handwritten signature in black ink that reads "Joseph F. Anderson, Jr." in a cursive script.

Joseph F. Anderson, Jr.
United States District Judge